IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 23983 of 2007(E)

AGAINST THE ORDER DATED 03/03/2007 IN EP 530/2005 IN OS.1055/1991 of PRL.MUNSIFF COURT,THRISSUR

.....

PETITIONER: JUDGMENT DEBTOR

C.K.SHAIJA, W/O. RAJAN, AGED 30 YEARS,
KAIRALI BHAVAN, KALLARA VILLAGE, K.T.KUNNU DESOM,
THIRUVANANTHAPURAM, NOW WORKING AS U.D.CLERK,
AT ASST. DIVISIONAL OFFICE, FIRE AND RESCUE
SERVICES, TRAINING ACADEMY, OPP. ENGG. COLLEGE,
VIYYOOR, THRISSUR.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: DECREE HOLDER

MAR APRAIM KURI COMPANY LTD.,
MUNICIPAL OFFICE ROAD, THRISSUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.23983 OF 2007 E

Dated this the 9th August, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Ext.P3 order. The decree holder had obtained a decree against the defendants and the present writ petitioner is one of the legal representatives of deceased Koran. What the court below has done is by effecting an order of attachment of salary of the legal heir the decree debt is attempted to be wiped out. It is a settled position of law that only the assets available in the hands of the legal representatives can be proceeded against and not the personal assets of the legal heirs. Just because she had obtained employment under the dying in harness scheme it will not entitle the decree holder to attach her salary. The writ petitioner has filed counter to that effect but the court below has not considered it even. Therefore, the order passed by the court below is per se illegal, which has to be set aside. Therefore, I set aside the order passed by the court below and direct the court to reconsider the matter in the light of the objections filed by the writ petitioner, after hearing both sides. Since it is being disposed of at the admission stage itself, the court below is directed to give notice to the decree holder, fix a date and then dispose of

the matter in accordance with law. Till effective adjudication is done the court shall not attach the salary of the present writ petitioner. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

jj